

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 9544 of 1999

Between:

- 1 Abdul Sattar Khan s/o. Abdul Karim Khan (died) Dept. of Zoology, Osmania University, O.U. Campus, r/o. H.No. 8, Near Narmada Hostel, O.U.Campus, Hyderabad- 500007.
 - 2 Abdul Majid Khan S/o. late Abdul Sattar Khan 7/A, Near Old Narsari Garden, Osmania University Campus, Hyderabad 500 007
 - 3 Ameer Unnisa Begum W/o. late Abdul Sattar Khan, 7/A, Near Old Narsari Garden, Osmania University Campus, Hyderabad 500 007
 - 4 Nazima Begum D/o. late Abdul Sattar Khan 7/A, Near Old Narsari Garden, Osmania University Campus, Hyderabad 500 007
 - 5 Abdul Amjad Khan S/o. late Abdul Sattar Khan 7/A, Near Old Narsari Garden, Osmania University Campus, Hyderabad 500 007
 - 6 Abdul Amear Khan S/o. late Abdul Sattar Khan 7/A, Near Old Narsari Garden, Osmania University Campus, Hyderabad 500 007
 - 7 Farheen Begum D/o. late Abdul Sattar Khan 7/A, Near Old Narsari Garden, Osmania University Campus, Hyderabad 500 007
- (Petitioners 2to7 brought on record as LRs of deceased Petitioner as per C.O. dt. 8-4-2005 in WPMP 2166/05).

..... PETITIONERS

AND

- 1 Osmania University, O.U. Campus, Hyderabad, Rep. by the Registrar,
- 2 The Vice Chancellor, Osmania University, O.U. Campus, Hyderabad.
- 3 The Registrar, Osmania University, Hyderabad.
- 4 K. Kalyan Rao (Retd. Director.) Treasuries & Accounts), Enquiry Officer, vide minimum order No. 2305/417/80/ Estt. II dt. 26-08-1997, Osmania University, Hyderabad.

- 5 Head of the Department of Zoology and Incharge head of Department of Botony,
University College of Science, Osmania University, Hyderabad.
- 6 The Security Officer, Osmania University, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus of other appropriate order or direction in the nature of writ against the respondents here in declaring the orders of termination No. MR - 51/417/80/Estt.II dated 07-03-1998 and No. B211/417/1980/Estt.II dt. 21-08-1998 passed by the respondent No. 3 herein as arbitrary, illegal, violative of principles of natural justice and are violative of articles 14,19 and 21 of the Constitution of India and consequently direct the respondents to reinstate the petitioner into service as Mali -Cum- Watchmen with retrospective effect with all ancillary and consequential benefits and pass such other order.

Counsel for the Petitioners:MR.B.NALIN KUMAR

Counsel for the Respondent Nos.1 to 6: GP FOR HIGHER EDUCATION

The Court made the following :

ORDER:

This writ petition is filed seeking a *Mandamus* to declare the order of termination No.MR-51/417/80Estt.II, dated 07.03.1998, and proceedings No.B211/417/1980/Estt.II, dated 21.08.1998, passed by the 3rd respondent herein, as illegal, arbitrary, violative of principles of natural justice and violative of articles 14, 19 and 21 of the Constitution of India and consequently to direct the respondents to reinstate the petitioner into service as Mali-cum-Watchmen with retrospective effect together with all ancillary and consequential benefits.

Originally, the writ petition was filed by one Abdul Sattar Khan and since he died during the pendency of the writ petition, his legal representatives were brought on record as petitioners 2 to 7, as per the order of this Court in W.P.M.P.No.2166 of 2005, dated 08.04.2005.

It is the case of the petitioner-deceased that he was working as Mali-cum-Watchman, in the department of Zoology, at Osmania University, and he had put in an unblemished record of service for about 20 years. While so, the 3rd respondent through proceedings, dated 07.03.1998, terminated his services on false charges of being involved in illegal and unlawful activity. Thereafter, the petitioner made a representation, dated 09.03.1998, to the 2nd respondent requesting to take a lenient view and revoke his termination. Further, the Osmania University Staff Association also made a representation, dated 02.04.1998, supporting the case of the petitioner. Since no action was taken in the matter, he preferred an appeal before the 2nd respondent against the said orders of termination. However, the 3rd respondent *vide* his memo, dated 21.08.1998, without giving any opportunity to the petitioner placed the matter before the Executive Council for consideration, and the Executive Council decided not to interfere with the said order of termination. Therefore, the present writ petition is filed.

It is the contention of the petitioner that the order passed by the 3rd respondent, as confirmed by the Executive Council, is arbitrary. Further, the enquiry was not properly conducted and the charges are trivial in nature and the punishment imposed against him is disproportionate to that of the misconduct alleged.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner. It is asserted that the petitioner had involved in a grave misconduct and hence, the

3rd respondent as well as the Executive Council, who is the highest body of the University, have taken a decision to dismiss the petitioner from the service of the University. The nature of charges itself would speak for themselves as to the petitioner's involvement in such an activity and the impugned order does not call for any interference of this Court under Article 226 of the Constitution of India.

Learned counsel for the petitioner contended that this is a case of no evidence apart from the fact that the findings are perverse, and that uncommunicated material was relied upon in the domestic enquiry and the findings have nothing to do with the charges levelled against the petitioner. Even otherwise, the punishment imposed is shockingly disproportionate to that of the misconduct alleged, since the petitioner had put in 20 years of service and maintained fairly a good record with the University.

Learned counsel for the respondents strenuously contended that the petitioner does not deserve any lenience to be shown and the enquiry conducted by the University and the order of termination as well as the order passed by the Executive Council do not call for any interference by this Court under Article 226 of the Constitution of India and the writ petition is liable to be dismissed.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned proceedings as well as the other material placed on record.

At the outset, I am of the opinion that the charges framed against the petitioner and the findings arrived at by the Enquiry Officer, have no relevance to each other. The sum and substance of the charges is that on 24th August 1997, at 10.00 p.m., when the petitioner was on duty as Watchman in the department of Zoology, some persons of questionable character were seen while carrying out unlawful activities, and at that time he was not present although he was supposed to be on duty. Some section of students caught hold of them and handed over to Osmania University Police Station, and the police booked a petty case against them. The petitioner was further charged that he was directly held responsible for allowing such an unlawful activity, which took place as a result of his gross negligence and dereliction of duties. Absolutely, there is no evidence to show that the petitioner either facilitated for committing certain petty offences in the University or was held responsible for some illegal activities being carried on in the department of Zoology on that particular day. The sole reliance seems to have been placed on the confessional statement of one Mohd. Jahangir that he had bargained with Mr.Sattar for Rs.200/- for using chabutara for his illegal act. Neither the said Jahangir was examined nor the petitioner was permitted to cross-examine him in these proceedings. Only the confessional statement made by the Jahangir was furnished to the petitioner. In view of the same and also in view of the fact that three professors, who are in no way concerned with the incident and who were examined by the Enquiry Officer, also did not speak anything against the petitioner except saying that some hearsay about the incident. Therefore, the finding of the Enquiry Officer that the petitioner, who was supposed to be present at the incident to prevent the misuse of the building; was either absent at that time or connive at the incident or was a party to the incident, is nothing but perverse. He could have come to any one of those findings and not all or alternatively. Though it cannot be said that this is a case of no evidence, but it is a case of perverse finding by the Enquiry Officer. Even otherwise, in the absence of a charge as to the petitioner's facilitating for commission of such offence in the University campus, it was not fair on the part of the Enquiry Officer to say that the petitioner had himself involved or facilitated in such activity without there being any clinching, cogent and acceptable evidence. Merely because this is a domestic enquiry that does not mean the Enquiry Officer could take imaginary thing into consideration and give a finding. Apart from this, as contended by the learned counsel for the petitioner, I am of the opinion that the punishment of termination from

service is shockingly disproportionate to that of the misconduct alleged against the petitioner. It is not as if that the petitioner is a habitual offender or habitually permitted such activities to be carried on at the University. Admittedly, the petitioner was absent at the time of incident. It is clear from the entire evidence that except stating that the petitioner was absent at the time of incident, nothing is attributed against the petitioner. However, since similar evidence is there in a domestic enquiry conducted against some other employee, the Enquiry Officer has taken the same into consideration and gave his own findings.

In over all circumstances of the case, I feel that the termination of the petitioner from service is shockingly disproportionate to that of the misconduct alleged. Generally speaking, it is not for this Court to substitute or alter the punishment imposed by the disciplinary authority. But unfortunately, since the petitioner died during the pendency of the writ petitioner, it is better to give a quietus to this litigation at this stage.

In the result, the order of termination passed by the 3rd respondent, as confirmed by the Executive Council, is modified to the extent that the petitioner is entitled for reinstatement into service with continuity of service but without back wages. Further, petitioners 2 to 7 are entitled for all the terminal benefits in view of the death of the petitioner on 12.01.2005 including pension, if he is so eligible. The respondents are directed to settle all the terminal benefits due to the petitioners within a period of three months from today.

With the above directions, the writ petition is allowed to the extent indicated. No order as to costs.

C.V.RAMULU, J

Dated:12.07.2005

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To

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- 2 The Vice Chancellor, Osmania University, O.U. Campus, Hyderabad.

- 3 The Registrar, Osmania University, Hyderabad.
- 4 K. Kalyan Rao (Retd. Director.) Treasuries & Accounts), Enquiry Officer, vide minimum order No. 2305/417/80/ Estt. II dt. 26-08-1997, Osmania University, Hyderabad.
- 5 Head of the Department of Zoology and Incharge head of Department of Botony, University College of Science, Osmania University, Hyderabad.
- 6 The Security Officer, Osmania University, Hyderabad.

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